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To: Facilities for the Developmentally Disabled  
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FDD

From: Judy Fryback, Director  
Bureau of Quality Assurance

<p><b>Recent Changes to Chapter 50 of the Wisconsin Statutes Affecting Facilities for the Developmentally Disabled</b></p>
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Significant changes to chapter 50 of the Wisconsin statutes became effective through 1997 Wisconsin Acts 237 and 280 on June 17, 1998, unless otherwise specified in statute. The purpose of this memorandum is to alert facilities for the developmentally disabled to those changes and briefly describe them.

The legislature made changes in the following areas:

- I. Definitions
- II. Conditions under which the Department may suspend admissions
- III. Increased upper limits of forfeitures
- IV. Tripling of forfeitures
- V. 35% forfeiture reduction in forfeiture if the citation and forfeiture are not appealed
- VI. Reporting of forfeitures to the legislature
- VII. Provisions relating to nursing home administrators

**I. Definitions**

A. Several new terms were added to chapter 50 by 1997 Wisconsin Act 237.

1. “‘*Basic care*’ includes periodic skilled nursing services or physical, emotional, social or restorative care.” [s. 50.01(1e), Stats.]
2. “‘*Licensed practical nurse*’ means a nurse who is licensed or has a temporary permit under s. 441.10.” [s. 50.01(1w), Stats.]. This means that a person who has not yet taken the examination to be licensed, or who has not yet heard the results of the examination, and who has a temporary permit under sec. 441.10, Stats., may be counted as an LPN. It does not include individuals who are in an educational program working toward an LPN degree nor does it include individuals who have completed the required coursework but have failed the licensing examination.
3. “‘*Nursing care*’ means nursing procedures, other than personal care, that are permitted to be performed by a registered nurse under s. 441.01(3) or by a licensed practical nurse under s. 441.11(3), directly on or to a resident.” [s. 50.01(2m), Stats.]

4. “‘*Registered nurse*’ means a nurse who is licensed under s. 441.06 or permitted under s. 441.08.”[s. 50.01(5r), Stats.]. This means that a graduate nurse who has not taken the examination to be registered or who has not yet heard the results of the examination and who has obtained a permit under s. 441.08, Stats., may be counted as a registered nurse. It does not include individuals who are students in an educational program working toward an RN degree nor does it include individuals who have taken the examination to be registered but have failed the exam.

B. The definitions of several terms currently in chapter 50 were modified through Act 237.

1. “‘*Nursing home*’ means a place ~~which provides 24-hour services including board and room to 3 or more unrelated residents who~~ where 5 or more persons who are not related to the operator or administrator reside, receive care or treatment and, because of their mental or physical condition require nursing care or personal care in excess of 7 hours a week require access to 24-hour nursing services, including limited nursing care, intermediate level nursing care and skilled nursing services. “Nursing home” does not include any of the following:  
  
(c) A convent or facility owned or operated exclusively by and for members of a religious order that provides reception and care or treatment of an individual.  
  
(d) A hospice, as defined in s. 50.90 (1), that directly provides inpatient care.  
  
(e) A residential care apartment complex.” [s. 50.01(3) (intro.), Stats.]
2. “‘*Operator*’ means any person licensed or required to be licensed under s. 50.03 (1) or a person who operates an adult family home that is licensed under s. 50.033(1m)(b).” [s. 50.01(4m), Stats.]
3. “‘*Personal care*’ means assistance with the activities of daily living, such as eating, dressing, bathing and ambulation, but does not include nursing care.” [s. 50.01(4o), Stats.]
4. “‘*Resident*’ means a person who is cared for or treated in any and is not discharged from a nursing home or a community-based residential facility or adult family home, irrespective of how admitted.” [s. 50.01(6), Stats.]

## II. New Conditions under which FDD Admissions Must be Suspended

Act 237 modifies s. 50.04(4) by specifying circumstances under which the Department must suspend new admissions to a facility. As detailed below, the circumstances relate to repeated class “A” or “B” violations.

“(d) *Suspension of admissions.* 1. The department shall suspend new admissions to a nursing home if all of the following apply:

- a. The nursing home received notices of violation for a class “A” violation or 3 or more class “B” violations in the previous 12 months.

b. The nursing home received notices of violation for a class “A” violation or 3 or more class “B” violations in any 12-month period during the 3 years immediately preceding the period specified in subd. 1.a.

2. A suspension of admissions under subd. 1. shall begin 90 days after a nursing home received its last notice of violation for a class “A” or class “B” violation if the department determines that the violation remains uncorrected 90 days after the nursing home received the last notice of violation. If the nursing home indicates to the department that the violation has been corrected, but the department is unable to verify that the violation has been corrected, a suspension of admissions under subd. 1. shall begin on the day that the department makes a return visit to the nursing home and determines that the violation has not been corrected. A suspension of admissions under subd. 1. shall remain in effect until the department determines that all class “A” and class “B” violations by the nursing home have been corrected. Admission of a new resident during the period for which admissions have been suspended constitutes a class “B” violation.

3. In determining whether subd. 1. applies, the department may not consider a notice of violation found to be unjustified after hearing.

4. If the department suspends new admissions to a nursing home under this paragraph, the department shall publish a class 1 notice under ch. 985, Stats., in a newspaper likely to give notice in the area where the nursing home is located.”

### **III. Increased Maximum Fines for Violations of Chapter 50**

Forfeiture levels for facilities for the developmentally disabled violations under chapter 50 have been increased.

1. Under s. 50.04(5)(a) of the statutes, the fines that the Department can assess for violations of chapter 50 and chapter HFS 132 have been increased for the following violations:

Class “A”: from a previous maximum of \$5,000 to a maximum of \$10,000 for each violation;  
Class “B”: from a previous maximum of \$1,000 to a maximum of \$5,000 for each violation; and  
Class “C”: from a previous maximum of \$100 to a maximum of \$500 for each violation.

2. Consistent with the preceding change, s. 50.04(5)(a)6. of the statutes has been changed to reflect the higher maximum forfeiture levels in the event that a nursing home fails to correct a violation within the time specified in the Department’s notice of violation or approved plan of correction:

“6. If a licensee fails to correct a violation within the time specified in the notice of violation or approved plan of correction, or within the extended correction time granted under sub. (4)(c)4., or if a violation continues after a report of correction, ~~a separate forfeiture may be assessed~~ the department may assess upon the licensee ~~in an amount not to exceed a separate forfeiture of not more than \$10,000 for class “A” violations, and may assess a separate forfeiture of not more than \$5,000 for class “B” violations, for each day of continuing violation, \$5,000 for class “A” violations and \$1,000 for class “B” violations.~~”

### **IV. New Provisions Relating to Tripling of Forfeitures**

Previously, s. 50.04(5)(a)5. of the statutes specified that the Department could assess triple the amount of forfeiture for class “A” or “B” violations of the same statutory or administrative rule provision occurring within a 2-year period. Acts 237 and 280 have repealed that provision and replaced it with the following:

“5.a. A nursing home that violates a statute or rule resulting in a class “A” violation and that has received a notice of violation for a class “A” violation within the previous 3-year period involving the same situation shall be subject to a forfeiture 3 times the amount authorized for a class “A” violation.

b. Except as provided in subd. 5.a., a nursing home that violates a statute or rule resulting in a class “A” or class “B” violation and that has received a notice of a class “A” or “B” violation of the same statute or rule within the previous 3-year period may be subject to a forfeiture 3 times the amount authorized for the most recent class of violation involved.

c. A notice of violation found to be unjustified after hearing may not be considered in applying this subdivision.

d. The forfeiture amount that is tripled under this subdivision shall be the amount assessed after all appeals have been exhausted. If an assessment of forfeiture is not contested and the forfeiture is paid as provided in par. (fm), the forfeiture amount that is tripled is the amount assessed after the reduction specified in par. (fm).”

In essence, the new statutory provisions extend the “look back” period to 3 years and makes the tripling of forfeitures mandatory for class “A” violations. The new statutory language also clarifies in subparagraph “d.” that the forfeiture amount that is tripled is either the amount assessed by the Department after all appeals have been exhausted or the lower amount resulting from a FDD’s timely payment of the forfeiture as described below.

## **V. Forfeiture Reduction for Timely Payment FDDs**

Act 237 established at s. 50.04(5)(fm) of the statutes a 35% reduction in the level of forfeitures imposed by the Department if a FDD does not contest a notice of violation. The specific wording is as follows:

“(fm) *Forfeiture reduction for timely payment.* If a nursing home does not contest a notice of violation under sub. (4)(e) and does not contest an assessment of forfeiture under par. (e) for a class “A” or class “B” violation and pays the forfeiture to the department within 10 days after receipt of the notice of assessment, the department shall reduce the amount of the assessment by 35%.

## **VI. Periodic Reporting of Forfeiture Assessments to the Legislature by the Department**

The Department is now required to submit an annual report to the Legislature that specifies for the previous year the number of class “A” violations, the amount of the forfeiture assessment for each of those violations and, if known, the amount of forfeiture actually paid and collected with respect to those violations. The report is also to include an explanation for any assessment that was less than \$2,500 for those class “A” violations. The Department is currently reviewing its policies regarding forfeiture assessments for statements of deficiency issued on or after June 16th and will issue further guidance in the future.

## VII. Provisions Relating to Nursing Home Administrators

Several changes were made in 1997 Wisconsin Act 237 to provisions in chapters 440 and 456 of the statutes that may be of interest to FDD administrators. While some of the changes simply repealed other, very recent, amendments to the chapters (and are not provided below), some of the changes made by Act 237 are more significant. I suggest that questions relating to these changes be directed to the Department of Regulation and Licensing.

1. s. 440.03(12) of the statutes was repealed.
2. s. 440.08(2r) [*Certification Concerning Delinquent Taxes*] of the statutes was repealed.
3. s. 440.08(4)(b) of the statutes was repealed and recreated to read:

“*Applicability.* This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13(2)(b).”
4. s. 440.12 of the statutes was created to read:

“**440.12 Credential denial, nonrenewal and revocation based on tax delinquency.** Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301(1)(c).”
5. s. 456.10(1)(d) of the statutes was created to read:

“Proof is submitted that while the licensee was the administrator of a nursing home, that nursing home engaged in conduct that constituted a pattern of serious violations of federal or state statutes, rules or regulations.”
6. ss. 456.11(1) and (2) of the statutes were amended to read:

“(1) The examining board may reinstate a license or registration to any person whose license or registration has been revoked. This subsection does not apply to a license or registration that is revoked under s. 440.12.”
7. “(2) Application for the reinstatement of a license of registration shall not be made prior to one year after revocation and shall be made in such a manner as the examining board directs. This subsection does not apply to a license or registration that is revoked under s. 440.12.”

If you wish to review the current version chapter 50 in its entirety, you can access it via the internet at the following address: [http://folio.legis.state.wi.us/cgi-bin/folioisa.dll/stats.nfo/query=\\*/doc/{t38331}?](http://folio.legis.state.wi.us/cgi-bin/folioisa.dll/stats.nfo/query=*/doc/{t38331}?) The updated version of chapter 50 should be posted at that site by the end of July according to the Office of the Revisor of Statutes. We also intend to provide a link to that site at the BQA website in the near future.

Should you have any questions regarding any of the preceding changes to chapter 50 made by 1997 Wisconsin Acts 237 and 280, please contact one of the Regional Field Office Directors listed below.

The Regional Offices are:

<b>Southeastern Regional Office</b> 227-4908 819 N. 6th St., Rm. 875 Milwaukee, WI 53203	Tony Oberbrunner, RFOD (414)
<b>Southern Regional Office</b> 243-2374 3514 Memorial Drive Madison, WI 53704	Phyllis Tschumper, RFOD (608)
<b>Northeastern Regional Office</b> 448-5249 200 N. Jefferson St., Suite 211 Green Bay, WI 54301	Pat Benesh, RFOD (920)
<b>Western Regional Office</b> 836-3032 312 South Barstow, St., Suite #1 Eau Claire, WI 54701-3667	Joe Bronner, RFOD (715)
<b>Northern Regional Office</b> 365-2802 1853 N. Stevens Street, Suite B Rhinelander, WI 54501	Marianne Missfeldt, RFOD (715)